

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

PREAMBLE

1. Sections Affected

Article 2
R2-8-201
R2-8-202
R2-8-203
R2-8-204
R2-8-205
R2-8-206
R2-8-207

Rulemaking Action

New Article
New Section
New Section
New Section
New Section
New Section
New Section
New Section

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 38-714(F)(5)

Implementing statutes: Arizona Session Laws 1995, Chapter 32, Section 24, as amended by Arizona Session Laws 1999, Chapter 66, Section 1; A.R.S. §§ 38-740, 38-762

3. The effective date of the rules:

May 4, 2004

The Arizona State Retirement System (ASRS) requests that these rules become effective upon filing with the Secretary of State. This immediate effective date is allowed under A.R.S. § 41-1032(A)(4), which allows rules to become effective immediately when the rules provide a benefit to the public and a penalty is not associated with a violation of the rules. It benefits the public, and in particular System members, to have these new rules in place so that they are aware of the procedures for applying gains and losses to benefits, if necessary. Currently, System members must rely on Session Law for guidance. These rules do not impose any additional requirements upon the public, and there is no penalty associated with the violation of these rules.

4. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 9 A.A.R. 4455, October 17, 2003

Notice of Proposed Rulemaking: 9 A.A.R. 4798, November 7, 2003

5. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Nancy O. Johnson, Rules Coordinator

Address: Arizona State Retirement System
3300 N. Central, 14th Floor
Phoenix, AZ 85012

Telephone: (602) 308-5172

Fax: (602) 264-6113

E-mail: nancyj@asrs.state.az.us

or

Name: Susanne Dobel, Manager, External Operations

Address: Arizona State Retirement System
3300 N. Central, 14th Floor

Notices of Final Rulemaking

Phoenix, AZ 85012

Telephone: (602) 240-2039

Fax: (602) 246-6113

E-mail: susanned@asrs.state.az.us

6. An explanation of the rule, including the agency's reasons for initiating the rule:

The Arizona State Retirement System (ASRS) has two benefit structures: The defined benefit program, commonly referred to as the "Plan," was established in Fiscal Year 1971/1972 by a vote of 80% of the membership. The defined contribution program, commonly referred to as the "System," was established in 1953 and includes all those ASRS members who have not elected to transfer to the Plan. As of June 30, 2002, the System had 2,113 members remaining. All but 397 of these members were retired. The System has been closed to new membership since the Plan was established. This rulemaking addresses the System.

The System is a hybrid of a defined contribution plan and a defined benefit plan. For non-retired members, the System is much like a defined contribution plan – members have individual accounts that are credited with contributions from members and employers, and interest at the actuarially assumed rate. At retirement, System members receive annuities based on the balance in their System account. The System converts the balance to an annuity using the ASRS interest and mortality assumptions. The System resembles a defined benefit plan in that a portion of non-retired members' accounts, and a portion of retired members' annuities are guaranteed. The guaranteed portion is the portion that arises from member and employer contributions (7% each, under A.R.S. § 38-771) and interest on those amounts at the actuarially assumed rate.

A non-retired System member's account is made up of the System member's contributions plus accrued interest, the employer's contributions plus accrued interest, and in years where there are excess earnings, a supplemental credit plus accrued interest. A supplemental credit has been credited every July 1 since 1956, except fiscal years 84-85, 02-03, and 03-04. In a defined contribution plan, all the monies are non-guaranteed and are at risk. However in the ASRS System, the members' and the employers' contributions plus accrued interest are guaranteed.

When a System member retires, the amount in the member's account (guaranteed and non-guaranteed) is converted into a monthly annuity. If there are excess earnings at the end of a fiscal year, the retired member may receive the member's share of the excess earnings as an annual 13th Check (non-guaranteed). The 13th Check is an accumulation of annual excess earnings annuities, so retired members who have been retired for a long time will have larger amounts in a 13th Check than more recently retired retirees. Those retirees that have retired since July 1, 2001 have not received a 13th Check because there have been no excess earnings since their retirements.

For each year in which the System has investment earnings that are in excess of the assumed rate of return and assets that are greater than total liabilities, the ASRS Board may elect to distribute a share of the excess to all System members as described in Arizona Session Laws 1995, Chapter 32, Section 24, as amended by Arizona Session Laws 1999, Chapter 66, Section 1 (the Implementing Statute). Specifically, Section 24 (B)(3) of the Implementing Statute provides the method for allocating this surplus. When a change in an actuarial assumption specified in Section 24 (B)(4) of the Implementing Statute results in a gain, the ASRS Board may elect to distribute a share of the excess to all retired System members and retired System member's beneficiaries.

In addition to increasing benefits, Section 24 (B)(3) and (B)(4) of the Implementing Statute also authorize the ASRS Board to reduce benefits for System members and beneficiaries "... if subsequent experience determines that the account is inadequate to maintain necessary reserves and to pay the life incomes or benefits."

The new Article 2 deals specifically with System members and implements, by rule, a procedure for applying annual actuarial losses, if any, to non-retired System members' accounts or to the benefits of retired members and beneficiaries under Section 24 (B)(3) of the Implementing Statute.

The new Article 2 also provides a procedure for applying gains and losses to retired System members' and their beneficiaries' benefits under Section 24 (B)(4) of the Implementing Statute, should the Board elect to make distributions under that subsection of Session Law.

Finally, the new Article 2 specifies:

1. How contributions are paid to System members who terminate their membership prior to retirement,
2. How lump-sum benefits are paid to non-retired System members' beneficiaries, and
3. The ratio of guaranteed to non-guaranteed benefits for a partial lump-sum distribution if a System member elects a partial lump-sum distribution.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

ASRS did not review any study relevant to the rule.

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8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

As of June 30, 2003, the System had assets of \$502,366,200 and liabilities of \$500,437,634. The System was 100.49% funded. In order to provide for consistent benefits, the Board determined that reductions to a member's and beneficiary's account or benefit would not be made as long as the System was at least 95% funded. If the funding level drops below 95%, reductions are made to raise funding level to 95%. On the other hand, no excess earnings are distributed if the System's funding level is between 95% and 105%. If the System's funding level exceeds 105%, the Board may distribute any excess earnings over the 105% funding level. As indicated in paragraph 6, excess earnings have been distributed every July 1 since 1956, except fiscal years 84-85, 02-03, and 03-04. There has never been a reduction in non-guaranteed benefits or account balances.

The economic impact of potential investment losses will be felt by all System members. Because the impact on the member or beneficiary depends on investment returns and the funding level of the System reserves, it is difficult to calculate the approximate cost of the impact per member, as each member's account value is different.

As an example of the possible economic impact on the System fund as a whole, assume that a 0% rate of return is achieved in a fiscal year, which would be less than the current assumed rate of 8%. If the System fund had \$475.6 million in assets and an estimated \$506.8 million in total liabilities, which resulted in a funded status of 93.8%, the ASRS would have to recover \$6.2 million dollars of liability from its System members in order to retain a funded status of 95%.

For a non-retired member, the immediate financial impact is to the non-retired member's account, and will affect the monthly annuity, calculated upon the non-retired member's retirement. For retired members or their beneficiaries, there is an immediate impact to their benefits. The amount the benefit is impacted depends on the ratio of the retired member's or the beneficiary's liability to the liability of the System fund as a whole.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules:

The following changes were made between the proposed rules and the final rules:

1. Minor grammatical and technical changes were made to correct grammatical errors and to clarify the meaning of the rules, as recommended by the Governor's Regulatory Review Council.
2. The term "Employer account" was defined to clarify the meaning of the rules.
3. The term "Member" was defined to clarify the meaning of the rules.
4. The term "System member" was removed because the terms "System" and "Member" are defined in the rule, so it is unnecessary to define "System member".
5. The language, "and as required in A.R.S. § 38-714(C)", was added to the second line of R2-8-206 to clarify the Board's authority to allocate excess surplus.
6. The language, "In determining whether to allocate excess surplus, the Board shall consider all factors that affect the funded status or may affect the funded status in the future.", was added at the end of R2-8-206 to clarify how the Board may allocate excess surplus.

11. A summary of the comments made regarding the rule and the agency response to them:

No comments regarding these rules were received.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporation by reference and their location in the rules:

Not applicable

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rule follows:

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

ARTICLE 2. STATE RETIREMENT DEFINED CONTRIBUTION PROGRAM

Section

R2-8-201. Definitions

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| | |
|-----------|---|
| R2-8-202. | <u>Actuarial Assumptions</u> |
| R2-8-203. | <u>Adjustment of Benefits for Retired System Members and Retired or Non-retired System Members' Beneficiaries under Section 24 (B)(3) of the Implementing Statute</u> |
| R2-8-204. | <u>Adjustment of Non-guaranteed Account Balances for Non-retired System Members under Section 24 (B)(3) of the Implementing Statute</u> |
| R2-8-205. | <u>Adjustment of Benefits under Section 24 (B)(4) of the Implementing Statute</u> |
| R2-8-206. | <u>Benefit Increases under Sections 24 (B)(3) and (B)(4) of the Implementing Statute</u> |
| R2-8-207. | <u>Return of Contributions</u> |

ARTICLE 2. STATE RETIREMENT DEFINED CONTRIBUTION PROGRAM

R2-8-201. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "Thirteenth check" means the aggregated amount of the annual annuities awarded to a retired System member as the member's pro rata share of the excess surplus allocated by the Board for an increase in retirement benefits and distributed once a year to a retired System member or, upon election by the retired System member, to the retired System member's surviving beneficiary.
2. "Fourteenth check" means the aggregated amount of the annual annuities awarded to a retired System member as the retired System member's pro rata share of the excess surplus due to changes in the interest rate assumption and life expectancy table assumption, allocated by the Board for an increase in retirement benefits distributed once a year to the retired System member or, upon election by the retired System member, to the retired System member's beneficiary.
3. "Actuary" means an individual who is a Fellow of the Society of Actuaries, and is hired and directed by the Board to make actuarial calculations, determinations, valuations, experience studies, recommendations, and other actions directed by the Board.
4. "ASRS" means the same as in A.R.S. § 38-711.
5. "Beneficiary longevity reserve account" means the account established under Laws of 1953 and continued in Section 24(B) of the Implementing Statute that is used to maintain benefits payable to retired System members and System members' beneficiaries.
6. "Board" means the same as in A.R.S. § 38-711.
7. "Employer" means the same as in A.R.S. § 38-711.
8. "Employer account" means that portion of a non-retired member's System retirement account that contains employer contributions, supplemental credits, and accumulated interest on employer contributions and supplemental credits.
9. "Employer contributions" means the same as in A.R.S. § 38-711.
10. "Excess surplus" means the funds in the beneficiary longevity reserve account that exceed the funded status range and that are subject to allocation by the Board as provided in R2-8-203(A)(3).
11. "Fiscal year" means the same as in A.R.S. § 38-711.
12. "Funded status" means the ratio, expressed as a percentage, of the actuarial value of assets for System members to the total liabilities of the System for future benefits.
13. "Guaranteed account balance" means all System member and employer contributions in a System member's retirement account, not including supplemental adjustments, plus the interest credited annually on those contributions.
14. "Guaranteed benefit" means the portion of a retired system member's or the retired System member's beneficiary's monthly benefit derived from the guaranteed account balance and calculated at the time of retirement.
15. "Implementing Statute" means Arizona Session Laws 1995, Chapter 32, Section 24, as amended by Arizona Session Laws 1999, Chapter 66, Section 1.
16. "Interest" means the assumed actuarial investment earnings rate approved by the Board.
17. "Market value" means an estimated monetary worth of an asset, based on the current demand for the asset and the amount of that type of asset that is available for sale.
18. "Member" means the same as in A.R.S. § 38-711.
19. "Member contributions" means the same as in A.R.S. § 38-711.
20. "Monthly benefit" means the annuitized payment of a retired System member's guaranteed and non-guaranteed account balances.
21. "Non-guaranteed account balance" means the sum of all supplemental adjustments and interest credited on those adjustments.
22. "Non-guaranteed benefit" means:
 - a. The portion of the monthly benefit derived from all supplemental adjustments and interest credited on those adjustments.
 - b. The 13th check, and
 - c. The 14th check
23. "Plan" means the same as "defined benefit plan" in A.R.S. § 38-769, and administered by the ASRS.

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24. "Retirement account" means the same as in A.R.S. § 38-771.
25. "Supplemental adjustment" means the amount credited or debited to a non-retired system member's employer account or to a retired System member's non-guaranteed benefit as determined by Section 24(B) of the Implementing Statute.
26. "System" means the same as "defined contribution plan" as defined in A.R.S. § 38-769, and which is administered by the ASRS.
27. "Total liabilities" means the amount needed to pay all System benefits.

R2-8-202. Actuarial Assumptions

The following actuarial assumptions apply to this Article:

1. The interest and investment yield rate is 8% per annum, compounded annually; and
2. Mortality rates are based on the 1983 Group Annuity Mortality Table, Unisex 50% male/50% female as provided in Table 1.

Table 1

1983 Group Annuity Mortality Table

Unisex 50% male / 50% female

| <u>Age</u> | <u>Mortality Rate</u> |
|-------------------|------------------------------|
| <u>1</u> | <u>0.000000</u> |
| <u>2</u> | <u>0.000000</u> |
| <u>3</u> | <u>0.000000</u> |
| <u>4</u> | <u>0.000000</u> |
| <u>5</u> | <u>0.000257</u> |
| <u>6</u> | <u>0.000229</u> |
| <u>7</u> | <u>0.000210</u> |
| <u>8</u> | <u>0.000199</u> |
| <u>9</u> | <u>0.000195</u> |
| <u>10</u> | <u>0.000195</u> |
| <u>11</u> | <u>0.000201</u> |
| <u>12</u> | <u>0.000209</u> |
| <u>13</u> | <u>0.000216</u> |
| <u>14</u> | <u>0.000224</u> |
| <u>15</u> | <u>0.000233</u> |
| <u>16</u> | <u>0.000241</u> |
| <u>17</u> | <u>0.000251</u> |
| <u>18</u> | <u>0.000261</u> |
| <u>19</u> | <u>0.000272</u> |
| <u>20</u> | <u>0.000283</u> |
| <u>21</u> | <u>0.000297</u> |
| <u>22</u> | <u>0.000310</u> |
| <u>23</u> | <u>0.000325</u> |
| <u>24</u> | <u>0.000341</u> |
| <u>25</u> | <u>0.000359</u> |
| <u>26</u> | <u>0.000378</u> |
| <u>27</u> | <u>0.000398</u> |

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| <u>28</u> | <u>0.000422</u> |
| <u>29</u> | <u>0.000446</u> |
| <u>30</u> | <u>0.000475</u> |
| <u>31</u> | <u>0.000505</u> |
| <u>32</u> | <u>0.000538</u> |
| <u>33</u> | <u>0.000574</u> |
| <u>34</u> | <u>0.000614</u> |
| <u>35</u> | <u>0.000668</u> |
| <u>36</u> | <u>0.000705</u> |
| <u>37</u> | <u>0.000751</u> |
| <u>38</u> | <u>0.000806</u> |
| <u>39</u> | <u>0.000873</u> |
| <u>40</u> | <u>0.000952</u> |
| <u>41</u> | <u>0.001043</u> |
| <u>42</u> | <u>0.001151</u> |
| <u>43</u> | <u>0.001278</u> |
| <u>44</u> | <u>0.001426</u> |
| <u>45</u> | <u>0.001597</u> |
| <u>46</u> | <u>0.001794</u> |
| <u>47</u> | <u>0.002014</u> |
| <u>48</u> | <u>0.002252</u> |
| <u>49</u> | <u>0.002509</u> |
| <u>50</u> | <u>0.002778</u> |
| <u>51</u> | <u>0.003059</u> |
| <u>52</u> | <u>0.003352</u> |
| <u>53</u> | <u>0.003659</u> |
| <u>54</u> | <u>0.003988</u> |
| <u>55</u> | <u>0.004336</u> |
| <u>56</u> | <u>0.004711</u> |
| <u>57</u> | <u>0.005121</u> |
| <u>58</u> | <u>0.005581</u> |
| <u>59</u> | <u>0.006103</u> |
| <u>60</u> | <u>0.006700</u> |
| <u>61</u> | <u>0.007383</u> |
| <u>62</u> | <u>0.008172</u> |
| <u>63</u> | <u>0.009080</u> |
| <u>64</u> | <u>0.010127</u> |
| <u>65</u> | <u>0.011328</u> |
| <u>66</u> | <u>0.012698</u> |
| <u>67</u> | <u>0.014242</u> |
| <u>68</u> | <u>0.015966</u> |

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| <u>69</u> | <u>0.017869</u> |
| <u>70</u> | <u>0.019958</u> |
| <u>71</u> | <u>0.022241</u> |
| <u>72</u> | <u>0.024765</u> |
| <u>73</u> | <u>0.027581</u> |
| <u>74</u> | <u>0.030740</u> |
| <u>75</u> | <u>0.034295</u> |
| <u>76</u> | <u>0.038286</u> |
| <u>77</u> | <u>0.042715</u> |
| <u>78</u> | <u>0.047569</u> |
| <u>79</u> | <u>0.052837</u> |
| <u>80</u> | <u>0.058508</u> |
| <u>81</u> | <u>0.064570</u> |
| <u>82</u> | <u>0.071006</u> |
| <u>83</u> | <u>0.077798</u> |
| <u>84</u> | <u>0.084927</u> |
| <u>85</u> | <u>0.092377</u> |
| <u>86</u> | <u>0.100370</u> |
| <u>87</u> | <u>0.108870</u> |
| <u>88</u> | <u>0.118004</u> |
| <u>89</u> | <u>0.128107</u> |
| <u>90</u> | <u>0.139029</u> |
| <u>91</u> | <u>0.150645</u> |
| <u>92</u> | <u>0.163045</u> |
| <u>93</u> | <u>0.176292</u> |
| <u>94</u> | <u>0.191504</u> |
| <u>95</u> | <u>0.208253</u> |
| <u>96</u> | <u>0.225097</u> |
| <u>97</u> | <u>0.242999</u> |
| <u>98</u> | <u>0.262351</u> |
| <u>99</u> | <u>0.283670</u> |
| <u>100</u> | <u>0.307186</u> |
| <u>101</u> | <u>0.333156</u> |
| <u>102</u> | <u>0.361975</u> |
| <u>103</u> | <u>0.394472</u> |
| <u>104</u> | <u>0.432808</u> |
| <u>105</u> | <u>0.478674</u> |
| <u>106</u> | <u>0.533916</u> |
| <u>107</u> | <u>0.600414</u> |
| <u>108</u> | <u>0.680076</u> |
| <u>109</u> | <u>0.774845</u> |

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| | |
|------------|-----------------|
| <u>110</u> | <u>1.000000</u> |
| <u>111</u> | <u>1.000000</u> |
| <u>112</u> | <u>1.000000</u> |
| <u>113</u> | <u>1.000000</u> |
| <u>114</u> | <u>1.000000</u> |
| <u>115</u> | <u>1.000000</u> |
| <u>116</u> | <u>1.000000</u> |
| <u>117</u> | <u>1.000000</u> |
| <u>118</u> | <u>1.000000</u> |
| <u>119</u> | <u>1.000000</u> |
| <u>120</u> | <u>1.000000</u> |

R2-8-203. Adjustment of Benefits for Retired System Members and Retired or Non-retired System Members' Beneficiaries under Section 24 (B)(3) of the Implementing Statute

A. The following actuarial methods apply:

1. The actuarial value of the assets of the System is equal to the market value of all System assets on the last day of each fiscal year;
2. The market value of the System assets is compared annually to the total liabilities, as of the last day of each fiscal year, including the amount necessary to fund the beneficiary longevity reserve account; and
3. A non-guaranteed benefit is not increased or decreased if the funded status is between 95% and 105%.

B. Benefits are reduced as follows:

1. The ASRS shall not reduce a retired System member's or a retired or non-retired System member's beneficiary's guaranteed benefit;
2. The ASRS shall reduce a retired System member's or a retired or non-retired System member's beneficiary's non-guaranteed benefit under this Section; and
3. The ASRS shall reduce a retired System member's or a retired or non-retired System member's beneficiary's non-guaranteed benefit if the funded status is less than 95%, by reducing the non-guaranteed benefit until the funded status equals 95%.

C. A retired system member's or a retired or non-retired System member's beneficiary's benefit is reduced as follows:

1. If the ASRS reduces the non-guaranteed benefit for a retired System member or retired or non-retired System member's beneficiary under this Article, ASRS shall reduce the non-guaranteed benefit using the same method used to distribute excess surpluses, as provided in Section 24 (B)(3) of the Implementing Statute.
2. The ASRS shall apply a negative supplemental adjustment to a retired System member's or the retired or non-retired System member's beneficiary's non-guaranteed benefit in the following order:
 - a. The 13th check, issued following the date of the valuation that determines the supplemental adjustment; and
 - b. The monthly benefit, applied by January 1 following the date of the valuation that determines the supplemental adjustment.
3. The ASRS shall use any remaining negative supplemental adjustment not applied to the retired System member's or the retired or non-retired System member's beneficiary's non-guaranteed benefit as an offset against future positive supplemental adjustments.

D. To restore a retired system member's non-guaranteed benefit after the ASRS has applied a negative supplemental adjustment under subsection (C), the ASRS shall apply a positive supplemental adjustment to a retired System member's non-guaranteed benefit in the following order:

1. The monthly benefit, applied by January 1 following the date of the valuation that determines the supplemental adjustment. The ASRS shall not apply more than the amount needed to offset previous negative supplemental adjustments; and
2. The 13th check, issued following the date of the valuation that determines the supplemental adjustment.

E. To restore a retired or non-retired System member's beneficiary's benefit after the ASRS has applied a negative supplemental adjustment under subsection (C), the ASRS shall apply a positive supplemental adjustment to a retired or non-retired System member's beneficiary's non-guaranteed benefit in the following order:

1. The monthly benefit, applied by January 1 following the date of the valuation that determines the supplemental adjustment. The ASRS shall not apply more than the amount needed to offset previous negative supplemental adjustments.
2. The 13th check, issued following the date of the valuation that determines the supplemental adjustment. The ASRS

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shall not apply more than the amount needed to offset previous negative supplemental adjustments.

R2-8-204. Adjustment of Non-guaranteed Account Balances for Non-retired System Members under Section 24 (B)(3) of the Implementing Statute

- A.** The actuarial methods listed in R2-8-203(A) apply to non-retired members.
- B.** If the ASRS reduces non-guaranteed account balances for non-retired System members under this Article, ASRS shall reduce non-guaranteed account balances using the same method as excess surpluses are credited, as provided in Section 24 (B)(3) of the Implementing Statute.
- C.** Account balances are reduced as follows:
1. The ASRS shall not reduce a non-retired System member's guaranteed account balance.
 2. The ASRS shall reduce a non-retired System member's non-guaranteed account balance under this Section, and
 3. The ASRS shall reduce a non-retired System member's non-guaranteed account balance if the funded status is less than 95% by reducing the non-guaranteed account until the funded status equals 95%.

R2-8-205. Adjustment of Benefits under Section 24 (B)(4) of the Implementing Statute

If the Board elects to distribute gains and losses under Section 24 (B)(4) of the Implementing Statute:

1. Changes in the interest rate assumption or the life expectancy table assumption shall take effect on June 30 following approval of the change by the Board;
2. Gains are allocated to a retired System member's or the retired system member's beneficiary's 14th check, issued following the date of the valuation that determines the positive supplemental adjustment, and are distributed as provided in Section 24 (B)(4) of the Implementing Statute;
3. Losses are allocated to the extent previous gains on or after January 1, 1975 have been allocated using the method employed under this Section;
4. The actuarial methods listed in rule R2-8-203(A) apply to this Section;
5. Benefits are reduced as follows:
 - a. The ASRS shall not reduce a retired System member's or the retired System member's beneficiary's guaranteed benefit.
 - b. The ASRS shall reduce a retired System member's and the retired System member's beneficiary's non-guaranteed benefit under this Section, and
 - c. The ASRS shall reduce a retired System member's and a retired System member's beneficiary's non-guaranteed benefit if the funded status is less than 95%, by reducing the non-guaranteed benefit until the funded status equals 95%;
6. If the ASRS reduces the non-guaranteed benefit for a retired System member or the retired System member's beneficiary due to changes in the interest rate assumption or life expectancy table assumption, ASRS shall reduce the non-guaranteed benefit using the same method used to distribute excess surpluses, as provided in Section 24 (B)(4) of the Implementing Statute;
7. The ASRS shall apply a negative supplemental adjustment to a retired System member or the retired System member's beneficiary's 14th check, issued following the date of the valuation that determines the supplemental adjustment; and
8. The ASRS shall apply any remaining negative supplemental adjustment not applied to the retired System member's or the retired System member's beneficiary's 14th check, under R2-8-203.

R2-8-206. Benefit Increases under Sections 24 (B)(3) and (B)(4) of the Implementing Statute

If the funded status is more than 105 percent, the Board shall exercise its discretion under Sections 24 (B)(3) and (B)(4) of the Implementing Statute and as required in A.R.S. § 38-714(C) to determine whether to allocate excess surplus to the appropriate System members and System member's beneficiaries. In determining whether to allocate excess surplus, the Board shall consider all factors that affect the funded status or may affect the funded status in the future.

R2-8-207. Return of Contributions

- A.** A System member who elects to receive a return of contributions under A.R.S. § 38-740 is paid as follows:
1. The ASRS shall pay the guaranteed portion of the account balance no sooner than 30 days after the member separates from service, unless earlier payment is otherwise authorized by law;
 2. The ASRS shall pay the non-guaranteed portion of the account balance upon completion of the actuarial valuation for the fiscal year end immediately before the date the member separates from service; and
 3. The ASRS shall pay the entire account balance no later than 90 days after the member separates from service.
- B.** A non-retired member's beneficiary who qualifies for and elects a lump-sum payout under A.R.S. § 38-762, is paid as follows:
1. The ASRS shall pay the guaranteed portion of the account balance upon verification of the member's death and determination of the deceased member's guaranteed portion of the account balance.
 2. The ASRS shall pay the non-guaranteed portion of the account balance upon completion of the actuarial valuation for the fiscal year end immediately before the date of the member's death, and

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3. The ASRS shall pay the entire account balance no later than 90 days after the beneficiary requests the lump-sum payout.
- C. If the ASRS pays a partial lump sum to a System member at retirement, the proportion of the guaranteed to non-guaranteed funds the ASRS pays to the System member is equal to the proportion of guaranteed to non-guaranteed funds in the System member's entire account.

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R3-2-202 | Amend |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**
Authorizing statute: A.R.S. § 3-107(A)(1).
Implementing statutes: A.R.S. §§ 3-2046, 3-2088, 3-2154, and 3-2161.
- 3. The effective date of the rule:**
May 4, 2004
(When approved by the Council and filed with the Office of the Secretary of State.)

Under the provisions of A.R.S. § 41-1032(A)(2), this rule incorporates a revision to the federal regulations that establish the Department's meat and poultry inspection and slaughtering standards. The material was published in the Federal Register on January 5, 2004. The Department filed a Notice of Rulemaking Docket Opening and a Notice of Proposed Rulemaking with the Office of the Secretary of State on January 6, 2004, to move forward with the rulemaking without delay.
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 10 A.A.R. 366, January 30, 2004
Notice of Proposed Rulemaking: 10 A.A.R. 338, January 30, 2004
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Sherry D. Blatner, Rules Analyst
Address: Arizona Department of Agriculture
1688 West Adams, Room 235
Phoenix, Arizona 85007

Telephone: (602) 542-0962
Fax: (602) 542-5420
E-mail: sherry.blatner@agric.state.az.us
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
This rulemaking updates the Department's rule regarding meat and poultry slaughter and inspection to match administrative and technical changes in federal rules. Incorporations by reference are updated.

Language use is conformed to the rulewriting standards of the Office of the Secretary of State.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study and other supporting material:**
None
- 8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
- 9. The summary of the economic, small business, and consumer impact:**
A. *The Arizona Department of Agriculture.*

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The Department will incur modest expenses related to educating staff and the regulated community on the amendments.

B. Political Subdivision.

Other than the Department, no political subdivision is affected by this rulemaking.

C. Businesses Directly Affected By the Rulemaking.

Incorporation of the amended federal regulation in the rule updates organizational and technical matters adopted by the Food Safety and Inspection Service ("FSIS") of the USDA. The adoption will not affect the costs of regulated establishments. Providing the public with current information on how the FSIS operates should increase the Department's efficiency and improve the delivery of inspection services to the regulated industries.

10. A description of the changes between the proposed rule, including supplemental notices, and final rule (if applicable):

Minor technical and grammatical changes have been made to the rule based on suggestions from Department and G.R.R.C. staff.

11. A summary of the comments made regarding the rule and the agency response to them:

The Arizona Department of Agriculture's Advisory Council supported the rulemaking by motion during a meeting held on January 15, 2004. The Department thanks the Council for its support of this rulemaking.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rule:

9 CFR Chapter III, Subchapters A and E, revised as of January 1, 2003, amended 69 FR 250-255, January 5, 2004. This material is incorporated by reference, is on file with the Department, and does not include any later amendments or editions. The following parts and sections of 9 CFR are excepted from incorporation: 302.2, 307.5, 307.6, 312, 322, 327, 329.7, 329.9, 331, 335, 381.38, 381.39, 381.96 through 381.112, 381.195 through 381.209, 381.218, and 381.220 through 381.225.

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rule follows:

TITLE 3. AGRICULTURE

**CHAPTER 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION**

ARTICLE 2. MEAT AND POULTRY INSPECTION

Section

R3-2-202. Meat and Poultry Inspection; Slaughtering Standards

ARTICLE 2. MEAT AND POULTRY INSPECTION

R3-2-202. Meat and Poultry Inspection; Slaughtering Standards

- A.** All meat inspection and slaughtering procedures shall be conducted as prescribed in 9 CFR Chapter III, Subchapters A and E, revised as of January 1, ~~2004~~ 2003, amended 69 FR 250-255, January 5, 2004. This material is incorporated by reference, on file with the ~~Office of the Secretary of State Department~~, and does not include any later amendments or editions. The following parts and sections of 9 CFR are excepted from incorporation: 302.2, 307.5, 307.6, 312, 322, 327, 329.7, 329.9, 331, and 335. A copy of the incorporated material may be purchased from the U.S. Government Online Bookstore at www.bookstore.gpo.gov.
- B.** All poultry inspection and slaughtering procedures shall be conducted as prescribed in 9 CFR Chapter III, Subchapters A and E, revised as of January 1, ~~2004~~ 2003, amended ~~67 FR 13253-13259, March 22, 2002~~ 69 FR 250-255, January 5, 2004. This material is incorporated by reference, on file with the ~~Office of the Secretary of State Department~~, and does not include any later amendments or editions. The following sections of 9 CFR are excepted from incorporation: 381.38, 381.39, 381.96 through 381.112, 381.195 through 381.209, 381.218, and 381.220 through 381.225. A copy of the incorporated material may be purchased from the U.S. Government Online Bookstore at www.bookstore.gpo.gov.

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determination of the Title IV-D Agency. The Title IV-D Agency conducts all administrative reviews requested throughout the state for all entities operating the Title IV-D program. This rule consolidates the administrative review and appeals procedures into a single rule, which will clarify both procedures for obligees.

An obligee must appeal a determination by the Title IV-D Agency regarding the distribution or disbursement of support within 30 business days from the date of the written determination. Appeals must be made to the Department of Economic Security's Office of Appeals. An obligee who wishes to appeal the determination of the Office of Appeals must appeal to the Department's Appeals Board. Further appeals may be made to the Court of Appeals pursuant to statute.

This rule will benefit individuals involved in Title IV-D child support cases because it:

- (1) Explains a clear process for requesting an administrative review of the distribution or disbursement of child support or related payments;
- (2) Supplements and clarifies the statute relating to administrative review; and
- (3) Indicates the information needed and the time-frames involved.

The Department will soon be proposing additional rules pertaining to child support enforcement, which will provide definitions for all of Chapter 7, in addition to explaining the process of distributing and disbursing child support, and the algorithm for distributing and disbursing child support. In the upcoming rulemaking, the term "Title IV-D Agency" will be defined to mean "the Division of Child Support Enforcement and all of its contracting entities that administer the Title IV-D services." "Support" will be defined to mean "the provision of maintenance or subsistence and includes medical insurance coverage and uncovered medical costs for the child, arrearages, interest on arrearages, past support, interest on past support, and reimbursement for expended public assistance. In a Title IV-D case, support includes spousal maintenance or spousal support that is included in the same order that directs child support." "Related payments" will be defined to mean monies other than support received under the statutes or court or administrative orders.

The Department of Economic Security has also entered into a legal settlement that requires the Department to have final rules defining this process for obligees.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The agency did not review any studies relating to this rule.

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

The Department has incurred minimal costs to provide a custodial parent administrative review process for review of distribution and disbursement issues as a result of this rulemaking. The Title IV-D Agency, custodial parents with Title IV-D child support cases, and the public will benefit from a clear and concise procedure for a custodial parent to request an administrative review regarding the distribution or disbursement of support or related payments. Costs incurred by the Title IV-D Agency to establish an administrative review process resulted from legislation previously passed, rather than the rulemaking. The state and the public will benefit from this rulemaking because custodial parents will understand and be aware of the procedures and may request an administrative review. Custodial parents are not required to have an attorney at the administrative review, so they will not incur legal costs to request a review.

The rule does not impose additional costs on the business sector. Custodial parents spend support payments on various goods and services from small and large businesses. This expenditure from support received is estimated to be substantial, but is not quantifiable. Through operation of the Arizona Tracking and Location Automated System (ATLAS), over \$250,000,000 was disbursed in FY 2003 to custodial parents in Title IV-D cases. The Department believes that a substantial amount of this support received is spent for housing, goods and services, transportation, child care, and other costs. Because a study has not been done to measure this spending, the Department does not know the true impact on the business sector.

Custodial parents will benefit from this rulemaking because written procedures regarding how to request a review or an appeal will exist. Through the reviews requested, the Title IV-D Agency also benefits, because this process serves as a check to the distribution and disbursement process.

10. A description of the changes between the proposed rule, including supplemental notices, and final rule (if applicable):

The R6-7-801 Section heading was changed to add the words "of Support or Related Payments," for further clarification, and this change was made throughout the rule. In subsection (A), the words "under A.R.S. § 46-408" were added for clarity. Subsection (B) was amended to improve clarity. It previously read: "With the request for administrative review, an obligee shall include any relevant information to assist in the review of the questioned distribution or dis-

Notices of Final Rulemaking

bursement.” It now reads: “An obligee shall include with the request for administrative review any information available to support the request.” Minor stylistic and typographical changes were also made at the request of the Governor’s Regulatory Review Council staff.

11. A summary of the comments made regarding the rule and the agency response to them:

The Department did not receive any comments on the proposed rule.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rule:

Not applicable

13. Incorporations by reference and their location in the rule:

Not applicable

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rule follows:

TITLE 6. ECONOMIC SECURITY

**CHAPTER 7. DEPARTMENT OF ECONOMIC SECURITY
CHILD SUPPORT ENFORCEMENT**

Article 8. ADMINISTRATIVE REVIEW

Section

R6-7-801. Oblige Request for Administrative Review of Distribution or Disbursement of Support or Related Payments

Article 8. ADMINISTRATIVE REVIEW

R6-7-801. Oblige Request for Administrative Review of Distribution or Disbursement of Support or Related Payments

- A.** An obligee requesting an administrative review under A.R.S. § 46-408 shall submit a written request with the information listed in subsections (1) and (2) to the address specified in the notice of collections:
1. The residential and mailing address of the obligee, and
 2. The reasons why the obligee disputes the distribution or disbursement.
- B.** An obligee shall include with the request for administrative review any information available to support the request. This may include such documents as:
1. Any support orders issued.
 2. Any notices sent by the Title IV-D Agency.
 3. Any proof of payments made.
 4. A copy of the obligee’s notice of collections sent by the Title IV-D agency, and
 5. Any other information the obligee believes to be relevant.
- C.** An obligee may submit a written request by first class mail, facsimile, or in person.
- D.** The Title IV-D Agency shall send a written request for additional information within 10 business days after receipt of the request for administrative review to the obligee if the agency requires the information to make its determination. The obligee shall provide the information requested within 30 business days of the date of the request.
- E.** An obligee may appeal a determination of the Title IV-D Agency regarding the distribution or disbursement of support or related payments under A.R.S. § 25-522. To make an appeal, an obligee shall file a written request with the Department’s Office of Appeals under A.R.S. Title 41, Chapter 14, Article 3, within 30 business days from the date of the written determination. An appeal from the Office of Appeals’ written determination may be made to the Appeals Board under A.R.S. § 41-1992. An appeal from the Appeals Board may be made to the Court of Appeals under A.R.S. § 41-1993.